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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FACSIMILE TRANSMITTED TO THE PATENT AND TRADEMARK OFFICE ON THE DATE SHOWN BELOW.

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Date: _____

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PATENT

Attorney's Docket No. 111228CX3.US



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

TOLSON

Application No.: 10/040,534

Filed: 12/28/01

For: FREQUENCY SYNTHSIZER FOR
DUAL MODE RECEIVER

Group Art Unit: 2631

Examiner:

RECEIVED

AUG 15 2002

Technology Center 2600

PETITION UNDER 37 CFR 1.47(b)

Assistant Commissioner of Patents
Washington, D.C. 20231

RECEIVED

SEP 24 2002

OFFICE OF PETITIONS

Sir:

08/14/2002 MABDI1 00000013 501788 10040534
01 FC:122 130.00 CH

Applicant hereby petitions for Tropian Inc. ("Tropian") to make application for patent on behalf of and as agent for the sole inventor of the present application, Nigel J. Tolson, a resident of Great Britain residing at 5 Brading Way, Purley-on-Thames, Reading, Berks, GB RG8 8BS.

In support of the petition are the following facts, supported by the attachments hereto.

The present invention was made by Mr. Tolson during the course of his employment at Tropic and under the terms of his employment agreement with Tropic, a copy of which is attached hereto. The employment agreement obligates Mr. Tolson to assign to Tropic inventions made during the course of his employment with Tropic and to cooperate in the filing of patent applications as occasion may require.

The undersigned repeatedly sought Mr. Tolson's cooperation in executing formal papers in the subject application. These efforts finally resulted in the attached email from Mr. Tolson declining to cooperate.

If any further showing is deemed required in order to grant the present petition, communication of the same, in writing or by telephone, is respectfully requested.

Respectfully submitted,

TROPIC, INC.


By: Michael J. Ure (Reg. No. 33,089)

20813 Stevens Creek Blvd.
Cupertino, CA 95014
(408) 422-1319
Date: August 6, 2002



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NT Employment Contract 2001

THIS AGREEMENT is made the 24th day of January 2001 BETWEEN **TROPIAN INC (EUROPE)** of Lower Woodend Barns, Fawley, Henley-On-Thames, RG9 6JF (referred to in this Agreement as "the Employer") and Nigel Tolson of 70 Westwood Glen, Tilehurst, Reading, Berkshire, RG31 5NW, UK (referred to in this Agreement as "the Employee").

The Employer and Employee agree as follows:-

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ORIGINAL

1. **JOB DESCRIPTION**

Technology Center 2600

The Employer shall employ the Employee as Systems Engineering Manager. A detailed job description is set out in Schedule numbered 1 which is attached. The Employer reserves the right to vary the Employee's job description in order to meet the needs of the Employer's business.

2. **DATE OF COMMENCEMENT OF EMPLOYMENT**

The employment commenced on 19th April 1999. No employment with a previous employer will count as part of the Employee's period of continuous employment.

3. **DURATION**

3.1 The employment shall continue until ended by either the Employer or the Employee giving the other not less than three months' notice in writing to end the employment, subject always to the statutory minimum requirement or until the employment is ended under another clause of this Agreement.

3.2 The Employer may at its sole discretion end this Agreement and pay the Employee money in lieu of salary and benefits to which the Employee would be entitled under the terms of this Agreement in full satisfaction of all salary and benefits to which the Employee may otherwise be entitled. Such a payment will have PAYE tax and national insurance contributions deducted at source. The Employer shall be entitled to make appropriate deduction for any monies receivable by the Employee which would constitute money and benefits to be taken into account as mitigation of the Employee's loss at common law if the Employee's Agreement had been unlawfully terminated by the Employer.

3.3 Once notice of termination has been given (whether by the Employer or the Employee) the Employer may at any time and for any period require the Employee to cease performing all or part of his job and/or exclude him from entering any of the Employer's premises. During the Employee's notice period the Employer shall be under no obligation to assign any duties to the Employee. The Employer will continue to pay the Employee's normal basic salary and all other contractual benefits during any such period. The Employee must not work for any other person, firm,

company or other business during this period, unless previously agreed with the Employer.

3.4 This Agreement may be terminated without notice or payment in lieu of notice by:

3.4.1 the Employer terminating the Agreement forthwith due to the gross misconduct of the Employee;

3.4.2 the Employer terminating the Agreement due to the misconduct of the Employee which, in the opinion of the Employer, justifies termination;

3.4.3 the Employee reaching the Employer's retirement age of 65;

3.4.4 the Employer if the Employee has been unable to perform his duties due to sickness or injury for 120 days, whether consecutive or not, in any period of 52 consecutive weeks;

3.4.5 the Employer if the Employee becomes of unsound mind or a patient for the purpose of any statute relating to mental health;

3.4.6 the Employer if the Employee is convicted of a criminal offence, except one which the Employer considers does not affect the Employee's position as its employee.

4. **DUTIES**

4.1 During the employment the Employee shall use his best efforts to promote the Employer's business and shall perform those responsibilities which are from time to time required of him by the Employer.

4.2 During his employment, the Employee must not directly or indirectly be concerned or interested in any other business either alone or in the name of any other individual firm or company without the Employer's permission in writing.

4.3 The Employee will comply with any directions the Employer may give with regard to the performance of the Employee's responsibilities.

4.4 The whole of the Employee's time, attention and abilities shall be spent on the Employer's business during normal business hours and at any other times the Employee is on the Employer's business.

5. HOURS OF WORK

- 5.1 The Employee's normal working hours are 9 am to 5.30 pm Monday to Friday with a one hour break for lunch together with such other hours as may be reasonably necessary for the performance of his duties. The Employee's working hours may be changed by the Employer to accommodate the operational needs of the business, and it is the expectation of the Employer that the Employee will be willing to work such additional hours as may be necessary for the success of the business. The Employee will not receive any additional remuneration for any hours worked in excess of the normal hours.
- 5.2 Regulation 4 of The Working Time Regulations 1998 [the "1998 Regulations"] provides for a maximum weekly working time which shall not exceed an average of 48 hours for every seven days in any reference period of 17 weeks. The Employee agrees that this limit does not apply to him. The Employee may terminate this agreement to opt out of the 48 hour weekly working time maximum by giving three months' notice in writing to the Employer. This opt out will remain in force unless and until such notice is given.

6. PLACE OF WORK

- 6.1 The Employee will be based at the Employer's premises at Lower Woodend Barns, Fawley, Henley-On-Thames RG9 6JF but may be required to travel to such other places or locations within the United Kingdom, and overseas as the Employer may require, on a temporary basis in the performance of his duties. Employer may relocate the Employee and the work premises within 20 miles from the current location near Henley-On-Thames.
- 6.2 The Employer may require the Employee to be based in other locations anywhere in the United Kingdom. The Employer will exercise its rights under this clause reasonably and will, if practicable, consult with the Employee before requiring any such relocation. If the Employer requires the Employee to relocate, he may be entitled to receive relocation expenses and allowances to be provided at the sole discretion of the Employer.

7. REMUNERATION

- 7.1 The Employee's salary will be £59,950 per annum which will be paid by direct debit into the Employee's bank account by equal monthly instalments, subject to the deduction of PAYE income tax and National Insurance, in arrears on or about the last working day of each calendar month.

- 7.2 The Employer reserves the right and the Employee agrees to the Employer deducting from his salary or final salary payment any sums which may be due or owed to the Employer by the Employee including but not limited to any over-payments of remuneration, loans made to the Employee by the Employer, commission advances, a day's pay for each day of unauthorised absence, relocation expenses, the cost of repairing any damage to or loss of Employer property or the property of customers caused by the Employee's negligence, recklessness, dishonesty or breach of the Employer's rules or otherwise.

8. EXPENSES

The Employer will repay the Employee all expenses properly incurred by the Employee in doing his job, provided the Employee gives the Employer receipts or other evidence of actual payment of such expenses when requested.

9. ABSENCE AND SICK PAY

- 9.1 If the Employee is unable to attend work for any reason and his absence has not previously been authorised by his Immediate Superior the Employee or someone on his behalf must notify his Immediate Superior of his absence and the reason for it on the first working day of absence by 10.00 am or as soon as reasonably practicable thereafter.
- 9.2 Following the Employee's return to work after a period of absence due to sickness or injury of 7 calendar days or less the Employee is required to complete a Self Certification Form stating the dates of and reasons for his absence including details of sickness on non-working days as this information is required for calculating Statutory Sick Pay ('SSP') entitlement. Failure to complete a Self Certification Form or making a false declaration on it may lead to disciplinary action and/or to SSP being withheld.
- 9.3 If the Employee is absent from work due to sickness for more than 7 calendar days including weekends he must provide a medical certificate by the eighth day of sickness or injury. Thereafter medical certificates must be provided each week to the Employer to cover any continued absence.
- 9.4 SSP is payable for a maximum of 28 weeks absence during illness or injury in respect of "qualifying days". The Employee's qualifying days are Monday to Friday inclusive. If requested by the Employer a Doctor's Certificate indicating fitness to return to work must be supplied. The first three qualifying days in any period of absence due of sickness are waiting days and no SSP (or salary) is payable. The

Employee is required to co-operate in the maintenance of necessary records for SSP purposes.

- 9.5 If the Employee is absent from work due to sickness or injury and complies with the requirements of this clause 9 regarding notification of absence he will be paid his normal basic remuneration for 20 working days whether consecutively or in aggregate in any period of fifty two consecutive weeks, such payment to be inclusive of the amount of any SSP or social security sickness benefits to which he may be entitled. Additional payment if any shall be of such sum and for such period as the Employer in its absolute discretion shall decide. Payments made to the Employee by the Employer pursuant to this clause are in satisfaction of the Employer's liability to make payment of SSP.
- 9.6 At any time during the period of his employment the Employee shall at the request and expense of the Employer submit to a medical examination by a registered medical practitioner nominated by the Employer and the Employee hereby authorises such medical practitioner to disclose to and discuss with the Employer the results of the examination and any matters which arise from it in order that the Employer is aware of any matters which might impair the Employee from properly discharging his duties or (if during a period of absence due to sickness) from returning to work.

10. HOLIDAY ENTITLEMENT

- 10.1 In addition to all statutory English Bank or statutory Holidays the Employee shall be entitled to holiday with pay for a period of 25 working days in each holiday year. The Employee's holiday year for the purpose of this Agreements runs from the 1st January to 31st December. The Employee shall not take holiday without the prior consent of the Employer and shall not take in excess of 15 days' holiday consecutively without the prior consent of the Employer.
- 10.2 Any holiday entitlement which remains unused at the end of the holiday year cannot be carried over to a subsequent year (and shall be deemed forfeited, and no payment in lieu will be made) unless his immediate Superior gives express permission for the Employee to carry over contractual holiday.
- 10.3 The Employee's entitlement to holiday during the holiday year in which employment commences or terminates or on termination of employment to holiday pay in lieu of holidays not taken will be pro-rata according to the proportion of service in such a year at the Employer's discretion rounded up or down to the nearest half day. A day's holiday pay is a sum equivalent to 1/261 of the Employee's annual

basic salary. The Employer reserves the right to require the Employee to take any accrued due but untaken holiday entitlement during his notice period even if booked to be taken after the end of his notice period.

10.4 For the purposes of the 1998 Regulations, it will be deemed that the holidays stipulated by the 1998 Regulations are taken and exhausted first as part of the Employee's contractual holiday entitlement.

10.5 No holiday may be taken during any period of notice without the prior approval of the Employer. The Employer may, however, at its discretion require the Employee to take holiday to which he is entitled but which he has not taken, during his notice.

11. PENSION

There are no private pension schemes available. The Employer does not hold a current contracting out certificate in respect of this employment. The Employer will observe its obligations in respect of stakeholder pensions.

12. PRIVATE HEALTH INSURANCE

12.1 The Employer will at its expense provide permanent health insurance ("PHI") for the benefit of the Employee (including any spouse and children) subject to the provisions governing such insurance (including those related to the Employee's acceptance on to the PHI Scheme) and on such terms as the Employer may from time to time decide, including the obtaining of insurance at reasonable rates of premium.

12.2 The Employer reserves the right at any time to amend the terms or benefits of the scheme. The employer also reserves the right to change the provider of the PHI Scheme provider at its sole discretion.

13. BONUS AND STOCK OPTIONS

13.1 The Employee will, in addition to his salary, be eligible at the absolute discretion of the Employer for a bonus on such terms and of such amount as may be approved from time to time by the Employer in its sole discretion.

13.2 The Employee will be eligible to participate in the Employer's Stock Option Scheme as adopted by the Employer at the absolute discretion of the Employer subject always to the approval of the Employer's Board of Directors in accordance with any rules and conditions as may be determined by the Employer as being applicable for the granting of any options to the Employee thereunder.

14. MOTOR CAR

Not applicable.

15. CONFIDENTIALITY

15.1 During the course of his employment the Employee will have access to confidential information relating to the business and clients of the Employer.

15.2 In order to protect the confidentiality of the affairs of the Employer, and without prejudice to every other duty to keep secret all confidential information given to the Employee, or gained in the course of employment, the Employee agrees that he will not either during the employment or after its termination disclose to anyone and will use his best endeavours to prevent the disclosure to anyone, of any confidential information concerning the customers, business accounts, affairs or finances of the Employer or any of its secrets, dealings or transactions (including any information relating to any customer of the Employer or anyone else with whom the Employer has business dealings) and the Employee shall not use any such information or secrets in any way for any purpose other than those of the business.

15.3 The Employee will not at any time make any copy, abstract, summary or precis of the whole or any part of a document relating to the business of the Employer except when required to do so for the purposes of the Employer in which event the copy, abstract, summary or precis shall belong to the Employer.

15.4 All tangible items including notes, memoranda, records, documents, software and writing made, acquired or received by the Employee relating to the business of the Employer shall be and remain the property of the Employer, and shall be delivered by the Employee to the Employer immediately upon request and in any event shall be surrendered by the Employee at the termination of his employment and no copies shall be made or retained by the Employee.

16. INTELLECTUAL PROPERTY

16.1 The Employee shall promptly disclose to the Employer all copyright works or designs originated, conceived, written or made by him alone or with others (except only those works originated, conceived, written or made by him wholly outside his normal working hours which are wholly unconnected with his employment) and shall hold them in trust for the Employer until such rights shall be fully and absolutely vested in the Employer.

16.2 The Employee hereby assigns to the Employer by way of future assignment all copyright, design right and other proprietary rights (if any) for the full terms thereof

throughout the World in respect of all copyright works and designs originated, conceived, written or made by the Employee (except only those works originated, conceived, written or made by the Employee wholly outside his normal working hours which are wholly unconnected with his employment) during the period of his employment by the Employer.

16.3 The Employee hereby irrevocably and unconditionally waives in favour of the Employer any and all moral rights conferred on him by Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988 for any work in which copyright or design right is vested in the Employer whether by clause 16.2 or otherwise.

16.4 The Employer shall at the request and expense of the Employer, do all things necessary or desirable to substantiate the rights of the Employer under clauses 16.2 and 16.3.

17. INVENTIONS

17.1 If at any time during his employment the Employee (whether alone or with any other person or persons) makes any invention which relates either directly or indirectly to the business of the Employer, the Employee shall promptly disclose to the Employer full details, including drawings and models, of such invention which shall be deemed to be an Employer Invention to the extent allowable under governing law, in which full right, title and interest resides in the Employer.

17.2 If under governing law the invention is not an Employer Invention, the Employer shall treat all information disclosed to it by the Employee as the confidential property of the Employer.

17.3 The Employee shall hold each Employer Invention in trust for the Employer and, at the request and expense of the Employer, do all things necessary or desirable to enable the Employer or its nominee to obtain for itself the full benefit of and to secure patent or other appropriate forms of protection for the Employer Invention throughout the World.

17.4 Decisions as to the patenting and exploration of any Employer Invention shall be at the sole discretion of the Employer.

17.5 The Employee irrevocably appoints the Employer to be his attorney in his name and on his behalf to execute documents, to use the Employee's name and to do all things which may be necessary or desirable for the Employer to obtain for itself or its nominee the full benefit of the provisions of this clause, and a certificate in writing

signed by any Director or the Secretary of the Employer that any instrument or act falls within the authority hereby conferred shall be conclusive evidence that such is the case so far as any third party is concerned.

18. DISCIPLINARY AND GRIEVANCE PROCEDURE

The Employer's procedures in respect of the above are for the purposes of the Employment Rights Act 1996 set out in Schedule 2. The procedures are of a non-contractual nature. The Employer reserves the right to impose penalties alternative to dismissal in circumstances where the disciplinary procedure is invoked.

19. SUSPENSION

In order to investigate a complaint of misconduct against the Employee the Employer is entitled to suspend the Employee on full pay for so long as may be necessary to carry out a proper investigation and hold a disciplinary hearing. Suspension will not normally exceed 10 working days. During any period of suspension the Employee will not be entitled to access to any of the Company's premises except at the prior request or with the prior consent of the Company and subject to such conditions as it may impose.

20. DATA PROTECTION

20.1 During the Employee's employment and for as long a period as is necessary following the termination of his employment, the Employer will:

20.1.1 Obtain, keep, use and produce records containing information about the Employee for administrative, management, analysis and assessment purposes in connection with the Employee's recruitment, employment and remuneration both in personnel files and on any of the Employer's computer systems. On occasions, the Employer may need to disclose information about the Employee to third parties. It will only do this when absolutely necessary, for instance it may use some of the information held to provide references to potential new employers. It will only use information held about the Employee in ways that are consistent with his employment, the business of the Employer and the principles of the Data Protection Act 1998 (the "Act").

20.1.2 Obtain, keep, produce and use personal data relating to the Employee to enable the Employer to safeguard the Employee's health and safety at work, for administrative purposes and administering sick pay. The Employer may also use sensitive data in order to comply with company procedures/obligations regarding the Employee's medical records.

20.1.3 Transfer some or all of the information in Employer records about the Employee to Tropic Inc (USA) which is based in the United States for administrative purposes.

20.2 Under the Act, the person or organisation that decides how information about individuals is used is known as the data controller. In this case, the Employer is the data controller. Sue Brackley is currently responsible for ensuring that the Employer complies with its obligations under the Act.

20.3 The Employee agrees to the Employer carrying out the processing of personal data and sensitive data (as such terms are defined in the Act).

21. HEALTH AND SAFETY AT WORK

The Employer will take all reasonably practicable steps to ensure the Employee's health, safety and welfare while at work. It is also the Employee's legal duty to take care of his own health and safety and that of his colleagues.

22. ALTERATIONS IN TERMS AND CONDITIONS

The Employer reserves the right to make reasonable changes to the Employee's terms and conditions of employment. The Employee will be notified of minor changes of detail by way of a general notice to all employees and any such changes take effect from the date of the notice. The Employee will be given not less than one month's written notice of any significant changes which may be given by way of an individual notice or a general notice to all employees. Such changes will be deemed to be accepted unless The Employee notifies the Employer of any objection in writing before the expiry of the period specified in the notice.

23. GENERAL

23.1 The Employee hereby warrants and represents to the Employer that he will not be in breach of his existing or former terms of employment whether expressed or implied or of any other obligation binding upon him by reasons of entering into this Agreement.

23.2 The Employee shall not at any time make any untrue or misleading statements in relation to the Employer.

23.3 This Agreement incorporates the particulars of the Employee's employment with the Employer in accordance with the requirements of the Employment Rights Act 1996. Where specified these are not contractual between the parties.

- 23.4 This Agreement sets out the whole agreement between the parties and is in substitution for any previous letters of offer, letters of appointment, Agreements of employment or terms and conditions in connection with the Employee's employment by the Employer which shall be deemed to have been terminated by mutual consent.
- 23.5 This Agreement will be construed in accordance with English Law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts to settle any disputes which may arise in connection with this Agreement.

SIGNED for and on behalf of
TROPIAN INC (EUROPE)

The Employer

Karen A. Danna

Date

01/02/01

SIGNED

Nigel Tolson

The Employee

N. J. Tolson

Date

24th Jan 2001

SCHEDULE 1
JOB DESCRIPTION

Systems Engineering Manager (Europe)

1. This position reports to the Director of Handset development.
2. The main responsibilities for this position will include:
 - 2.1 Management of the UK based Engineering design team, this responsibility includes the line management function for the employees and the project management of any given tasks to the group.
 - 2.2 The overall design responsibility for any design or specification produced in the UK facility.
 - 2.3 Performing Pre-study, feasibility, product development, Production support and test of mobile radio systems and sub-systems.
 - 2.4 Performing pre-study, feasibility, detailed specification, test of integrated circuits.
 - 2.5 The writing of technical papers for both internal and external publication.
 - 2.6 Producing and tracking of project plans
 - 2.7 Purchasing of test equipment and software
 - 2.8 The hiring of suitable engineering staff.
 - 2.9 The reporting of progress and status on a weekly basis.

The employee will be expected to visit California on average a week every three months, and to undertake some UK and European travel.

SCHEDULE 2

TROPIAN (INC) EUROPE (the "Company")
GRIEVANCE AND APPEALS PROCEDURE

Purpose

The object of the grievance procedure is to enable employees who consider they have a grievance or complaint arising from their employment with the Company to have it dealt with at the nearest appropriate level within as short a time as possible. Anyone wishing to use this procedure can do so freely and without prejudice to his/her position in the Company. It applies to all employees, irrespective of job or grade or length of service.

The Company reserves the right to change any of the provisions of this grievance and appeals procedure by amendment, addition or deletion or by substitution of new rules or procedures from time to time at its discretion. The procedures outlined are not contractual and do not form part of your terms and conditions of employment.

Informal Procedure

In the first instance all grievances should be referred to your immediate superior who will attempt to deal with the matter after making such investigations as are necessary. Every opportunity will be given for your grievance to be stated and thoroughly discussed. As appropriate further investigation may take place. Your immediate superior will notify you of his/her decision as soon as is reasonably practical.

If your grievance is still not resolved using the informal procedure you may take action under the formal procedure.

Formal Procedure

At all stages of the grievance procedure you may be accompanied by a fellow worker or trade union representative of your choice who is willing to attend with you.

1. Stage One

- 1.1 You should refer your grievance to your immediate superior in writing who will make such investigations as may be necessary. Where your grievance or complaint relates to your immediate superior, you should raise it with the next level of management. Your immediate superior or the manager who is dealing with the matter will then arrange a grievance hearing as soon as is reasonably practical to discuss your grievance and will remind you of your right to be accompanied by a fellow worker or trade union representative. At the hearing you will be given every

opportunity for your grievance to be stated. If appropriate, further investigations may take place.

- 1.2 Following the grievance hearing, your immediate superior/the manager who is dealing with the matter will notify you of his decision in writing, where possible within **ten** working days. If it is not possible to respond within that timescale you will be given an explanation for the delay and informed of when you may expect to receive the written decision.

2. Stage Two

- 2.1 If you remain dissatisfied with the decision made at Stage One, you may within **ten** working days of that decision refer the matter to a Director or Vice President.
- 2.2 The Director or Vice President will make arrangements for a grievance appeal hearing at which you will have the opportunity to make submissions for consideration which, where possible, will be held within **ten** working days. The Director or Vice President will remind you of your right to be accompanied by a fellow worker or trade union representative. The Director or Vice President will, where possible, give a decision in writing within **ten** working days. If it is not possible to respond within that timescale you will be given an explanation for the delay and informed of when you may expect to receive the written decision.
- 2.3 The Director or Vice President's decision is final and binding and the grievance procedure is exhausted following this stage. There is no further right of internal appeal.

Harassment

1. If you believe that you are being harassed, whether sexually or racially, or on the grounds of disability or are the victim of any other form of harassment or unlawful discrimination, you should report to a Director or Vice President who will investigate the matter. Your report will be treated as confidential unless you agree otherwise.
2. The Company regards harassment as a form of intimidation and considers it to be unacceptable behaviour in the working environment. Where a complaint of harassment, or any other form of unlawful discrimination is upheld, disciplinary action will be taken against the perpetrator.

Public Interest Disclosures

1. The Company encourages employees to report any wrong doing by the Company or its employees. The Company recognises employees may not always feel comfortable about

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discussing their concerns internally particularly if they believe the Company itself is responsible for the wrong doing.

2. If you have any concerns about wrong doing at work, for example, a criminal offence, a health and safety danger, a miscarriage of justice, damage caused to the environment, failure to comply with any legal obligation or the concealment of any of these, you are encouraged to report the matter to a Director or Vice President.
3. Your report will be treated as confidential unless you agree otherwise.
4. Where further investigation into the matter is needed, this will be carried out and you will be informed of the outcome of any investigations and any action taken.
5. If you are concerned about the speed or conduct of the investigation or the way the matter is being resolved, you should refer the matter to a Director or Vice President. When the Director or Vice President has investigated your complaint, you will be informed of the result of the investigation and what, if any, action has been taken.
6. You should be aware that where a report is made otherwise than in good faith, for example, for malicious reasons or to pursue a personal grudge against another worker, this will constitute misconduct and be dealt with in accordance with the terms of the Company's disciplinary procedure.
7. The Company recognises that there may be certain matters that cannot be dealt with internally and that external authorities will need to become involved. Where this is necessary, the Company reserves the right to make appropriate referrals without your consent.

DISCIPLINARY AND APPEALS PROCEDURES

1. **Purpose**

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct and attendance. The procedures outlined are **non contractual**. The aim is to ensure fair treatment for all employees compatible with the working environment. The highest standards of conduct are to be maintained to encourage respect for ones colleagues, care for health and safety of both colleagues, customers and other visitors to the Company's premises and to maintain a quality and professional service to the customers and to others with whom there is contact or association by the Company.

2. **Application of Procedures**

These disciplinary procedures will apply to all employees who have 9 months continuous service. When an offence is committed or performance falls below the standard required by employees with less than 9 months continuous service the Company will at its discretion determine whether disciplinary action short of dismissal will be taken bearing in mind the gravity of the offence and the employees' record of work and conduct. The Company reserves the right to take disciplinary action or to terminate the contract of employment in these circumstances, without using the warning procedures.

3. **Disciplinary Rules**

This procedure may be invoked at any level including summary dismissal. The Company reserves the right to leave out any or all of the stages of this disciplinary procedure where it considers it appropriate to do so. The Company reserves the right to change any of the provisions of this disciplinary procedure by amendment, addition or deletion or by substitution of new rules or procedures from time to time at its discretion. Any changes will be notified to all employees by appropriate means.

4. **Informal Procedure**

4.1 Your immediate superior will usually be able to resolve any performance or conduct problems through informal discussions in the normal course of work. Any initial misconduct or conduct or achievement falling short of that expected in your position will therefore be dealt with in the first instance by your immediate superior. It is intended that any minor faults will be drawn to your attention with the intention of ensuring that you are aware of the standards expected.

4.2 Your immediate superior will discuss the issues informally with you to allow you to raise queries or seek clarification. The discussion will be private.

4.3 If any minor incident of misconduct is witnessed by an employee other than your immediate superior, such a matter may be drawn immediately to your attention and then referred to your immediate superior for discussion.

5. **Formal Procedure**

Principles

If it is necessary to invoke the Company's formal disciplinary procedure, the procedure set out below will apply.

5.1 You will have the right to be accompanied at any disciplinary hearing by a fellow worker or trade union representative who is willing to attend with you.

5.2 No disciplinary action will be taken before a proper investigation has been carried out.

5.3 You will be advised of the case against you at least **ten days** before the disciplinary hearing. At a disciplinary hearing the complaint will be fully explained to you and you will be given the opportunity to state your case before any decision is made.

5.4 The fellow worker or trade union representative you have chosen to accompany you may make representations on your behalf and ask questions providing that you authorise this at the beginning of the relevant hearing. Your fellow worker or trade union representative is not permitted to answer questions on your behalf.

5.5 Disciplinary hearings will be conducted in private to ensure confidentiality.

5.6 The disciplinary hearing will be conducted by your immediate superior or other senior person designated by the Company. Any disciplinary hearing as a result of which dismissal is contemplated will be conducted by a Director or Vice President.

5.7 If you fail to attend a disciplinary hearing, the hearing may proceed in your absence.

- 5.8 You should note that if a single breach of discipline or poor performance is particularly serious (albeit a first occasion) you may be given a final warning or dismissed without notice or payment in lieu of notice although no previous warnings have been given.
- 5.9 In most cases, repetition of misconduct, poor performance of duties or further breaches of discipline during the currency of a final written warning will result in your dismissal.
- 5.10 Except for instances of gross misconduct (examples of which are given below) you will not normally be dismissed for a first act of misconduct.
- 5.11 Appropriate account will always be taken of your employment/disciplinary record with the Company and all other relevant factors when determining the appropriate penalty.

6. **Suspension**

You may be suspended on full pay pending the outcome of investigation into the alleged offence and conduct of the disciplinary hearing. If you are so suspended, your contract of employment will continue together with all rights under it but during the period of suspension you will not be entitled to access to any of the Company's premises except at the prior request or with the prior consent of the Company and subject to such conditions as the Company may impose. Suspension will not normally exceed **ten** working days and is not a disciplinary penalty.

7. **Records**

You will be given a copy of any warning issued (including any recorded verbal warning) and a copy will be placed on your personnel file.

8. **Consequences of misconduct**

Oral Warning

This applies if your conduct does not meet the acceptable standard but the offence is minor. If a formal Oral Warning is given this will be confirmed to you. You will have explained to you the standards that are expected in your future conduct and the improvement required and over what period, and where appropriate the day upon which your conduct/performance will be reviewed. A note will be placed on your personnel file confirming that an Oral Warning has been given and a copy will be

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given to you. This will remain on your file for **6 months** but will be regarded as 'spent' thereafter unless any further disciplinary action is taken during that period.

Written Warning

If the seriousness of the conduct merits it or there is a repetition of misconduct or a failure to meet the standards expected by the Company justify it, a Written Warning will be given. The Written Warning will state clearly that it is a Written Warning. You will have explained the standards that are expected in your future conduct and the improvement required and over what period, and where appropriate it will identify when your conduct/performance will be reviewed. A copy of the warning will be placed on your personnel file. This will remain on your file for **6 months** but will be regarded as 'spent' thereafter unless any further disciplinary action is taken during that period.

Final Written Warning

If the seriousness of the conduct merits it or there is a repetition of misconduct or the failure to meet the standards expected of you by the Company justify it, a Final Written Warning will be given. If a Final Written Warning is given, the Written Warning will state clearly that it is a Final Written Warning and explain your right of appeal. You will have explained the standards that are expected in your future conduct and the improvement required and over what period, and where appropriate it will identify when your conduct/performance will be reviewed. A copy of the warning will be placed on your personnel file. This will remain on your file for **12 months** but will be regarded as 'spent' thereafter unless any further disciplinary action is taken during that period.

Termination of Employment

If the seriousness of the conduct merits it or there is repetition of the misconduct or the failure to meet the standards expected by the Company justify it, your employment will be terminated. If your employment is terminated this will be confirmed in writing and will summarise the reasons for the decision to terminate your employment.

Summary Dismissal

You will be dismissed immediately without notice or payment in lieu of notice for gross misconduct.

9. **Nature of Offences**

The following are **non exhaustive** examples of offences which, if committed, will normally lead to formal disciplinary action being taken.

1. **Minor Offences**

- ✍ Unpunctuality
- ✍ Distributing unauthorised literature
- ✍ Gambling
- ✍ Any minor breach of the Company's rules or regulations
- ✍ Unauthorised absence from work

2. **Serious Offences**

- ✍ Negligence resulting in minor loss or damage or injury
- ✍ Failure to comply with specific instructions
- ✍ Irresponsibility or impropriety in relation to other employees' activities, whether or not in working hours
- ✍ Any action detrimental to or conflicting with the interests of the Company
- ✍ Failure to disclose personal interests conflicting with the Company
- ✍ Repetition of minor offences
- ✍ Carrying or consuming intoxicating liquor or unprescribed drugs
- ✍ Contravention of minor safety regulations

3. **Gross Misconduct**

- ✍ Negligence resulting in serious loss, damage or injury
- ✍ Theft
- ✍ Malicious damage
- ✍ Deliberate and/or serious breach of confidence relating to the Company, its customers or their affairs
- ✍ The improper use of personal and confidential information
- ✍ Falsification of records including Company records
- ✍ Conviction of a criminal charge
- ✍ Unlawful harassment or discrimination of any kind
- ✍ Dishonesty
- ✍ Failure to comply with relevant statutory or regulatory requirements
- ✍ Serious insubordination
- ✍ Violent, abusive or intimidating conduct
- ✍ Disregard for the safety of other employees including deliberate disregard of or persistent breaches of the Company's health and safety policy

- ✍ Unauthorised entry into the Company's computer system including lending or disclosing an access password
- ✍ Breach of the Company's security policy including lending or giving your electronic key card or security pass to an unauthorised person
- ✍ Unauthorised use of Company property
- ✍ Breach of the Company's policies in effect from time to time
- ✍ Unauthorised possession, copying, alteration, mutilation, destruction or retention of Company records or documents
- ✍ Unacceptable conduct towards the Company's customers or clients
- ✍ Any action likely to bring the Company into disrepute
- ✍ Accepting a gift which could be construed as a bribe
- ✍ Failure to disclose correct information on your application form
- ✍ Conviction for any serious criminal offence whilst an employee of the Company.

10. **Appeals Procedure**

1. If you are dissatisfied with any disciplinary decision taken, you have the right to appeal to the level of management immediately above that at which the decision was taken within **ten working days** of the date on which you were notified of the disciplinary decision.
2. Where you appeal against any disciplinary action taken against you, the original disciplinary decision including a decision to dismiss will be implemented pending the appeal hearing and its outcome.
3. The appeal must be put in writing stating the grounds for appeal. The appeal will be heard by an appropriate senior manager who has not been involved in the previous disciplinary proceedings. The appeal hearing will be conducted as soon as possible, normally within **ten working days** of receiving your notice of appeal.
4. At the appeal hearing you have the right to be accompanied by a fellow worker or trade union representative who is willing to attend with you who may make representations on your behalf and ask questions providing that you authorise this at the beginning of the relevant hearing. Your fellow worker or trade union representative is not permitted to answer questions on your behalf.

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5. The decision of the senior manager conducting the appeal will be notified to you in writing as soon as possible, normally within **ten working days** of the appeal hearing and will be final and binding. There is no further right of internal appeal.
6. An appeal hearing cannot increase a disciplinary penalty imposed.



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INBOX - READ MESSAGE [mure@ix.netcom.com]

Date: Wed, 31 Jul 2002 15:59:32 +0100
From: nigel.tolson@hmse.com
[\[add to address book\]](#)
Reply-To: nigel.tolson@hmse.com
To: mure@ix.netcom.com
Subject: Re: Signatures

RECEIVED

AUG 15 2002

Technology Center 2600

Hi Mike,
After giving this issue some consideration over the past few days. I've come to the conclusion that it would not be in my professional interest to do anything which would be profitable for Tropician Inc. as I now work for a competitor. I'm sorry for the inconvenience this may have caused.
Kind regards
Nigel

mure@ix.netcom.com wrote:

> Hi Nigel.
>
> Did you get my follow-up email? Do we need to try fax instead?
>
> I would greatly appreciate it if I could get the signed docs from you. If they
> are not filed soon, the applications will become abandoned, and our work will
> have gone for naught.
>
> Please let me have your reply today if I may.
>
> Thanks.
>
> Mike

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